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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,364	06/19/2001	Johannes Hendrikus Van Lith	PB0013/US	1078

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EXAMINER

JOHNSON, VICKY A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,364

Applicant(s)

VAN LITH ET AL.

Examiner

Vicky A. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 6 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, and 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6, 8, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al (US 5,169,369) in view of Takagi (JP-1-247841).

Masuda et al disclose a driving belt comprising: a carrier consisting of two endless band packages (34) lying side by side (see Fig 6), on which transverse elements (32) are disposed freely movable in a longitudinal direction of the band (col. 2 lines 56-65), wherein each transverse element includes two recesses (68) positioned opposite each other for receiving the band packages (see Fig 6), so that a first part (36) of the transverse element extends under the band packages, a second part (40) of the transverse element is positioned between the band packages, and a third part (38) of the transverse element extends above the band packages, wherein the front side of the first part (36) transverse element includes a tilting line (L) extending in a horizontal direction and forming a transition between a part of the element at least including the third part (38) that has a constant thickness and a part of the element wherein the thickness tapers downward away from the tilting line (see Fig 6), a projection (72) which can mate with a recess (80) in a manner allowing in the adjacent transverse element free movement of adjacent elements in the longitudinal direction of the belt (col. 2 lines

56-65), wherein the projection and the recess are at least partially formed in the second part of the transverse element (see Fig 6) and wherein the projection is disposed some distance above the tilting line (see Fig 6), which has a distance smaller than the smallest vertical component of the recess (see Fig 6).

Masuda et al do not disclose that the projection and the recess extend in the horizontal direction over the entire dimension of the second part.

Takagi discloses that the projection and the recess extend in the horizontal direction over the entire dimension of the second part.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the projection and recess of Masuda et al to extend in the horizontal direction over the entire dimension of the second part as taught by Takagi in order to improve the efficiency of power transmission (Abstract).

Masuda et al do not disclose that the transverse elements are made of metal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the transverse elements of Masuda et al of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Re claim 2, Masuda et al show the projection and the recess are entirely located in the second part of the transverse element (see Fig 6).

Re claim 6, as best understood, Takagi shows and renders obvious the surface of the projection and the recess comprises parts, which extend at an angle to a horizontal line in the plane in which the band packages lie (see Fig 3).

Re claim 8, Masuda et al disclose the claimed invention as described above, but do not disclose the transverse element being made from a strip of material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the transverse element from a strip of material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

3. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al (US 5,169,369) in view of Takagi (JP-1-247841) as applied to claims 1, 2, 4, 6 and 10 above, and further in view of Maruyama (EP-421804).

Takagi discloses the claimed invention as described above, but does not disclose that the edges of the transverse element have been deburred.

Maruyama discloses that the edges (10) of the transverse element have been deburred and rounded (see Fig 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include round the edge of the transverse element as taught by Maruyama in the driving belt of Masuda et al so that the transverse element comes into firm contact with the pulley walls (col. 3 lines 44-53).

The method of forming a device is not germane to the issue of patentability of the device itself. These limitations, "a cutting operation" and "a tumbling operation", have not been given patentable weight.

Response to Arguments

Some further comments regarding the Applicant's remarks are deemed appropriate.

The Applicant argues that the Masuda et al reference fails to meet the limitations of the claims, because the reference fails to anticipate the projection and the recess extending over the entire width of the middle or second part of the transverse element. The Masuda et al reference is not relied upon to anticipate the projection and the recess extending over the entire width of the middle or second part of the transverse element. The Takagi reference is used to show the projection and the recess extending over the entire width of the middle or second part of the transverse element. One having ordinary skill in the art would use the teaching of the Takagi reference to modify the elements of Masuda et al.

The next argument is that the Takagi reference fails to show the transverse elements and belt being made of metal, the lower part of the element being tapered, and the elements being freely movable in the longitudinal direction. The Takagi reference is not relied upon to show these features, as stated above the Takagi reference is used to show the projection and the recess extending over the entire width of the middle or second part of the transverse element. The Masuda et al reference is relied upon to show the lower part of the element being tapered, and the elements being freely movable in the longitudinal direction. The feature of the transverse elements and belt being made of metal are obvious as stated above.

Also argued is the method of manufacturing the transverse elements to produce the protrusion and the recess extending across the entire width of the middle or second part of the transverse element. The method of forming the device is not germane to the issue of patentability of the device itself. The Takagi reference shows the protrusion and the recess extending across the entire width of the middle or second part of the transverse element.

It is argued that although the Masuda et al reference teaches that other shapes of projections can be used, the shape of the Applicant's projection should not be considered as one of them. Although the Masuda et al reference fails to teach the limitation that the projection extends over the entire width of the transverse element, the Takagi teaches that exact limitation. It would have been obvious to one having ordinary skill in the art to modify the element of Masuda et al in view of the teaching of Takagi.

The Applicant's remarks have been accorded due consideration, however they are not deemed fully persuasive.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (703) 305-3013. The examiner can normally be reached on Monday-Thursday (7:00a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (703) 308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

vaj *RAJ* 7/14/03
July 14, 2003


Thomas R. Hannon
Primary Examiner